93-734

No. _____

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT FOR THE UNITED STATES OF AMERICA

DANIEL T. MILLER, Petitioner

v

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Sui Juris

-

Daniel T. Miller
C/o Box 115
Edwall Washington

509-236-2219

QUESTIONS PRESENTED FOR REVIEW

I

Does a person (natural or artificial) still need to be a "Taxpayer" for Title 26 United States Code, USC, and the regulations implemented thereunder to impact his/her/its life?

II

Are natural born Americans, birthed within the geographical area of one of the fifty States, subject to any of the legislation codified under Title 26 USC and the regulations promulgated thereunder at the time of birth and are they "Taxpayers" from the first moment?

III

If not born "Taxpayers" as above does one become a "Taxpayer" by proclamation of people within the executive branch?

IV

If born a "Taxpayer", what legislation/regulation is effective?

V

If jurisdiction is challenged and no hearing is scheduled or held to determine jurisdiction, do subsequent ex parte events

acted out within a branch of government or a governmental agency make a natural born American a "Taxpayer"?

VI

Does a Social Security application submitted and a subsequent number issued in the name of, on behalf of, a minor or any incompetent make a "Taxpayer" of that infant then and/or after competency is acquired?

VII

Does a natural born American become a "Taxpayer" by contract?

VIII

Is the Uniform Commercial Code, UCC, the controlling body of law in *VII* above and if not controlling does UCC have any impact?

IX

Does exercising the natural right to exist, without license, make a natural person, born in one of the fifty States a "Taxpayer" if a certain "dollar" amount is acquired as a result of exercising a natural right?

X

Does being a commercial airline pilot, not licensed, but certified by the Federal Aviation Administration for the protection of the public, make a "Taxpayer"?

XI

Did the one time signing of a "W-2" form claiming no exemptions, for the purpose of gaining entrance into the workforce of United Airlines without being an administrative problem and causing immediate termination, cause Daniel T. Miller to become a "Taxpayer"?

XII

Did the Appellee, United States of America, send a message to the Ninth Circuit Court of Appeals in its Brief that Appellant was a "Taxpayer" and therefore the Court was to rule pursuant to an agreement worked out with the Executive department and the Judiciary dealing with certain types of "Taxpayers", as reported by Mr. Homer O. Croasman, Regional Commissioner, Western Region, Internal Revenue

Service, in a memorandum on the minutes of a February 9, 1973 meeting on the "Tax Rebellion Movement"?

XIII

Is the denial of a Motion pursuant to Rules 7052(b), 9023, and 9024 of the Federal Rules of Bankruptcy Procedure appealable and thereby affecting the finality of the original order?

XIV

Was the appeal filed by Daniel T. Miller on 15 May 1992, timely as an appeal of the Bankruptcy Court's order, entered 24 July 1991, dismissing Bankruptcy Petition No. 87-03919-K11?

XVI

Have the laws been followed by the lower courts and if not do any of the lower courts need supervisor control?

XVII

Should all property of Petitioner be returned which was seized, taken, converted by for or to the IRS after a Jurisdictional hearing was demanded in 1984 but not held be returned and if so with interest?

XVIII

Is the protection of a *Tax System* in which most people "believe" that they are taxpayers more important than the Written Law?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Ninth Circuit.

Marsha L. Miller filed a petition in Bankruptcy which was Joined with her husband Daniel T. Miller, Appellant, herein petitioner as Bankruptcy Number 87-03919-K11.

TABLE OF CONTENTS

Page

Question Presented for Review..... 1

List of Parties to the Proceedings in the Court Below..... 6

Table of Authorities..... 8

Opinions Below..... 10

Statement of Jurisdiction..... 11

Constitutional Provisions, Treaties, Statutes, Rules and Regulations Involved..... 12

Statement of Case..... 14

Reasons for Granting Writ..... 21

Conclusion..... 26

Appendix:

A. Opinion of Ninth Circuit Court of Appeals..... 28

B. Judgment, decree, or order of the District Court For Eastern District of Washington

22 May 1992..... 33

13 May 1992..... 37

C. Judgment, decree, or order of the Bankruptcy Court For Eastern

District of Washington

3 September 1991..... 46

24 July 1991..... 47

D. Order of Ninth Circuit Denying ReHearing..... 53

TABLE OF AUTHORITIES

Supreme Court

Federal Crop Ins. Co. v. Merrill, 332 US 381..... 16

Griggs v. Provident Consumer Discount, 459 US 56... 24, 25

Lower Courts

In Re Crystal Sands Proproties, 84 BR 665..... 24

In Re M'Call, 145 Fed Rep 898..... 24, 25

In Re Souza, 795 F.2d 855..... 20, 24

In Re Sweet Transfer & Storage Inc., 896 F.2d 1189..... 24

STATUTES

Title 11 USC..... 21

Title 28 USC..... 21

Title 28 USC 1254(1)..... 12

RULES

BR 2002(b)..... 13

BR 7052(b)..... 13

BR 8002(b).....13, 24

BR 9023.....13

FRAP 40..... 11

REGULATIONS

NONE

MISCELLANEOUS

Croasmun

Memorandum.....22, 23

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

Daniel T. Miller, Petitioner,

v

United States of America, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Daniel T. Miller, the petitioner herein, respectfully asks that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the case number 92-035503 on March 4, 1993 and rehearing denied on August 11, 1993.

OPINIONS BELOW

The March 4, 1993 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, is an unpublished case under number 92-35503, and is reprinted in

the separate Appendix to this Petition, pp. 28. The following prior opinions are also unpublished, to the best knowledge of Petitioner and are reprinted in the separate Appendix at the pages so indicated. The United States District Court for the Eastern District of Washington, entered 22 May 1992 under case number CS-91-391-FVS, and is found at, pp. 33. The May 13 1992 opinion also under case number CS-91-391-FVS is found at, pp. 37. The preceding Bankruptcy Courts opinion issued 4 September 1991 reaffirming the order of 24 July 1991 dismissing Bankruptcy Petition Number 87-03919-K11 is found at, pp. 46. The Bankruptcy Courts opinion issued 24 July 1991 is found at, pp. 47.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1993. A Petition for Rehearing was filed pursuant to Federal Rules of Appellate Procedure 40 and a suggestion for en banc hearing was timely filed. The Court of Appeals entered an order August 11, 1993 denying the petition for

rehearing. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Constitution for the united States of America and the doctrine of *Separation of Powers* as embodied in Article I, II, and III; Article 1 Section 8 clause 4 and Article 1, Section 9, clause 3; Article IX and X of the Bill of Rights; which follows:

Separation of Powers

The plain language is that members of the Executive Branch do not meet with members of the Judicial branch for the purpose of agreeing on how to handle people labeled as "Tax Protesters".

I, § 8, c4

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

I, § 9, c3

No Bill of Attainder or ex post facto Law shall be passed. emphasis added

IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This case involves the Bankruptcy Rule, BR 2002(b) and 8002(b) which provides as follows:

2002(b) TWENTY FIVE DAYS NOTICE TO PARTIES IN INTEREST.
Except as provided in subdivision (h),(i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections to and the hearing to consider confirmation of a plan.

8002(b) Effect of Motion on Time for Appeal. If a timely motion is filed in the bankruptcy court by any party: (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. emphasis added. *Bankruptcy Code, Rules and Official Forms, 1987 Law School Edition, West Publishing Co.*.

STATEMENT OF THE CASE

This is a case initially holding only one question before the Court of Appeals.

> "WAS DANIEL T. MILLER'S APPEAL, FILED 15 MAY 1992, TIMELY AS AN APPEAL OF THE BANKRUPTCY COURT'S ORDER, ENTERED 24 JULY 1991, DISMISSING BANKRUPTCY PETITION NO. 87-03919-K11.

The Attorney for the United States made a special effort in his brief to the Court of Appeals to classify Mr. Miller as a "Taxpayer". Petitioner feels very strongly that this classification has influenced the Appeals Court. Two hundred years ago the classification of a person was often done and was known as *Bill of Attainder*.[1] The form may have been different but the effect was to deprive a person, with out ***due process***. It is true that the Constitution forbids Congress but it is even truer that people in the other branches are also forbidden *To Touch* someone. The classification of a person is *To Touch* or place a *Bill of Attainder* upon that

---

[1] From the French term meaning *To Point* or *To Touch* with the finger of accusation.

body thereby depriving of ***due process.*** In 1984 Petitioner demanded a jurisdictional hearing but could not gain a hearing. Instead Petitioner was classified as a "Tax Protester" after speaking at a local meeting held by Senator Symms.

The Petitioner does not grab at the constitution for the serving of *"Rights"* because he knows well that his Rights are *Natural Rights* from birth and available when he was able to claim them. People in the United States government are supposed to take an oath to uphold the Constitution for the united States of America. There is a difference.

Petitioner has spent over six and three fourths years combined in the U.S. Army and Air Force and another three and a half years overseas. He experienced attempts to influence military reports that he was responsible for. He did not recognize that the Major was trying to place a *Bill of Attainder* on the Private under investigation when the written rules said otherwise. The Majors efforts were in vain.

Petitioner knows that the easy way to stop this *Bill of Attainder* is to simply go back overseas. Yes there is a

freedom overseas that Petitioner does not enjoy here in America. But, I was borne here in America and believe in the *Written Law* and not the law of men. None of the lower courts or agencies want to address the *Law as Written.*

It is my duty to determine that a person holding to be acting for the government is operating with authority.[2] Any acts orchestrated without authority are a nullity.

This government as written is incapable of acting illegally but agents for the government have in the past. This case is evidence of the foregoing.

Had a hearing been held in 1984 as demanded in a Letter to Internal Revenue Service Agent Mr. James Quam this Petition would not be before this Court. In pertinent part on page 3 of 4:

So, to recapitulate; I have been and am a person who feels that he should pay his way and contribute to my government's support. I want nothing from my government in the form of gratuity. I can do no more than is in my

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[2] Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. Federal Crop Ins. Co. v. Merrill, 332 US 381, 384.

capacity, which is limited.[3] Unless this economy "turns around" I will have to reduce my contributions.

Mr. Quam, I want you to set a date for a HEARING during which you will have the opportunity to share with me your rules, regulations, United States Code, United States Positive Law, and United States Constitution Sections and phrases which have given you JURISDICTION over my and any of my families "persons, houses, papers, and effects, against unreasonable searches and seizures, ..." Once you have established your jurisdiction then you can proceed to by establishing with-out reasonable doubt that you have probable cause to believe that I have done something wrong against the United States of America. You will need to provide a true and accurate copy of my file and any and all accusers against me.

If when all legal and just proceedings have transpired and it has been shown to me that with out reasonable doubt I do in fact owe the United States of America; I do pledge my interest in the Social Security Fund, or by what ever name that would be more proper, to the full extent of what ever legal debt that is due and owing by me and my wife to the United States Government. Two, in the alternative, I do pledge to work my and my wife's debt off by cleaning the Pocatello IRS office at Room 106, 250 S. 4th Street.

Since the hearing has still not, almost nine years later, been held all of the ex parte events, classifications, and claimed debts are a nullity.

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[3] Mr. Miller was mostly unable to find work from Nov. 1980 to Jun. 1985 except for about 3 months a year and usually overseas when working.

Petitioner has not since 1976 signed any Internal Revenue Service, IRS, forms or entered into any contracts or agreements with the IRS. Petitioner has authorized United Airlines to withhold the maximum amount from his wages based on no exemptions. This amount is a donation and Petitioner has not asked for any return of the amount so withheld; $33, 365.90 in 1992, and for 1993, as of September 16, 1993 an authorized amount of $31,084.10 has been withheld. For the record Petitioner is not engaged in any taxable activity and has no tax liability.

Instead the *Touch* continued and in 1987 when Mr. Miller was beginning to "make ends meet" on what in the airline business was known as the "B Scale" the IRS convinced United Airlines to turnover Mr. Millers wages. The claim against the Millers was around $300,000 and the Miller's assets were very low, (less than $10,000, ten thousand, I would guess). That is the definition of Bankruptcy. The number of debtors is not a factor at all and with out *Attainder* would not have been a factor. The rest of

the concert is reflected in the orders and memorandums attached in the Appendix. A few highlights are to follow:

The Bankruptcy Court claims to have held a confirmation hearing; but could not have held such hearing when the day before an amended plain was filed, thereby becoming the Plan, requiring time and notice pursuant to the Bankruptcy Rules.

The District Court supported the myth of a confirmation hearing buy its footnote of the May 13 1992 order which was a statement about the docket. Not only was the reference to Bankruptcy Docket number 84 a reference to an erroneous entry, 7/25/91 verses the correct entry of 6/25/91 (the date of the dismissal and supposed confirmation hearing) but had there been a hearing on 7/25/91 it would not have conformed to Bankruptcy Rules, when the Bankruptcy Court Clerk sent a notice dated 07/19/91 fixing the time for objections to the amended plan's disclosure statement as August 26, 1991. The Bankruptcy Court could not hold a hearing pursuant to the Bankruptcy Rules, 2002(b), the day following the filing

of the Amended Disclosure Statement and Amended Plan which became the Plan.

The District Court erred by not recognizing that the finality of the Bankruptcy Courts order denying amended findings etc., was not determined until this Court ruled or the time to petition had expired along the way. This question has not been presented to this Court heretofore

The Circuit Court of Appeals has not addressed the question before it but says:

> The time to appeal, however, was tolled only until September 3, 1991, when the bankruptcy court entered the order denying Miller's motion to amend. See Bankr. R. 8002(b); see also In Re Souza, 795 F. 2d at 857

Petitioner does not come to this Court with eagerness but has in the past avoided this road. To wit: the United States Trustee, UST, filed a motion to dismiss the subject Bankruptcy Petition and was sued by Mr. Miller.[4] who subsequently stipulated to dismiss knowing that if the UST

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[4] The system is not Geographically Uniform and therefore patently Unconstitutional. Therefore the UST does not have capacity. Note: Not a question brought by this petition; raised here because of mention by lower courts.

attempted to act as a party in interest the suit could be refilled. Of course that was the last heard from the UST.

The basis for federal jurisdiction is pursuant to the Constitution for the united States of America Article 1 §8 c4 in that congress has enacted a bankruptcy law and the States are estopped from enacting their own. This American had no other recourse but in the federal arena. Title 28 and Title 11 USC provide jurisdiction to the lower courts.

REASONS FOR GRANTING THE WRIT

The judgment of the United States Court of Appeals for the Ninth Circuit should be reviewed by this Court for the following reasons:

1. The Ninth Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and has sanctioned by it's affirmation the departure by the lower courts and agencies, as to call for an exercise of this Court's power of supervision.

The Circuit Court has gone along with the classification of this Petitioner as a *Taxpayer* with out a hearing or calling for the United States to present evidence to support it's claim and classification that this Petitioner is a *Taxpayer* in spit of and over the objection of Petitioner. If this Court will consider the lengthy questions presented[5] then the Court should have doubts that the Petitioner is a *"Taxpayer"*. Maybe in the lower courts secrete arena worked out by Mr. Croasmun[6] *Taxpayer* is a euphemism for *Tax Protester*. After reading the Respondent's classification of Petitioner as a Taxpayer and having read how the Regional Commissioner for the Western Region is able to discuss with Judge Crocker

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[5] Petitioner apologies for the number but knew of no other way to present them in light of "if not asked in Petition -not answered."

[6] "Mr. Croasmun reported on his discussions with Assistant U.S. Attorney Couris and Judge Crocker, Fresno, and of their interest in enforcement of the law in tax rebel cases. Mr. Hansen commented on the problem of federal judges appearing to be anti-IRS based on a belief that IRS is 'highhanded.' Mr. Howard reported on a change of attitude in federal judges in San Francisco after he met with a number of them and discussed the gravity of the Tax Rebellion Movement and the importance of giving prison sentences as deterrents." *Minutes of February 9, 1973 Conference on Tax Rebellion Movement in California as sent by memorandum by Regional Commissioner, Western Region, Homer O. Croasmun, Feb 26, 1973.* emphasis added

how he (Why he?) should be interested in enforcing the law (before it is enforced upon him?) by Commissioner Croasmun and what exactly did Mr. Howard say to change the attitude of the San Francisco judges. Did it stop there? Or has Petitioner been exercised upon by Mr. Croasmun 20 years later?

2. The Ninth Circuit Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court. Petitioner could not find any case that was parallel to the events in his case. Petitioner has filed motions and appeals with in the specified time each time. He reasons that the finality or final disposition of an order does not transpire until one of two things happen: i) the time expires for action or; ii) the decision is rendered by the court of last resort, this supreme Court. The cases that have been found always have untimely filings for various reasons. This Case brought before the Ninth Circuit was not such a case.

3. The Ninth Circuit Court of Appeals has decided this case in a way that is in conflict with its own cases and those of other Circuits.

The Ninth Circuit in its 4 March 1993 ruling cites In Re Souza, 795 F.2d 855 as reason that this Petitioners appeal was not timely, but, Souza at 857 provides the very opposite language:

> The ten day period is subject to extension should a *timely motion* be made for, *inter alia*, amendment or alteration of the findings of fact. Bankruptcy Rule 8002(b)(2). But Greene filed no such motions in the bankruptcy court, emphasis added.

The Ninth Circuit completely ignores it's own BAP case In Re Crystal Sands Properties, 84 BR 665 (9th Cir BAP 1988) or it's own case citing the lower courts *Crystal Sands* In Re Sweet Transfer & Storage, Inc., 896 F. 2d 1189 (9th Cir. 1990) in which this Courts *Griggs* is cited as authority.

The Sixth Circuit in 1904, In Re M'Call, 145 Federal Reporter 898, 899;

> ...the relators filed a written petition praying for a rehearing in the matter of the confirmation of the

> composition. The effect of such a motion, when filed seasonably, is to suspend the finality of the order or judgment sought to be reheard until disposed of, and the time limit for an appeal or writ of error does not begin to run until it is disposed of.

It is disposed of when either this Court disposes of it or no appeals are sought in the lower courts and the time expires. But as a question is headed towards this court there is no final disposition.

4. The Ninth Circuit Court of Appeals has decided a federal question in a way that conflicts with applicable decisions of this Court.

The best example of a conflict with this Court is the celebrated Griggs v Provident Consumer Discount, 459 US 56. Though Griggs does not talk about a Motion to amend, appealed all the way up to this Court and then the original court amending its order by direction from this Court and then the appeal of the lower court's decision being appealed, it does suggest that the Ninth Circuit is wrong in it's March 4th 1993 order.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully asks that his petition for a writ of certiorari be granted. Petitioner asks that the judgment of the Court below be reversed, that the cause be remanded with direction that the Bankruptcy Court shall hold a complete review with strict emphasis on Respondent providing the Law, or Contract that makes Petitioner a Taxpayer and thereby places Liability upon Petitioner; that all claimed debts by Respondent be varified under penalty of perjury.

Further, that all property heretofore seized, taken or acquired by whatever means by Responedent without authorization by the Petitioner be returned with interest.

Respectfully submitted, Dated 5 November, 1993

Daniel T. Miller, Sui Juris
C/o Box 115
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509 236 2219

APPENDIX A

Filed
MAR 4 1993

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DANIEL T. MILLER, Husband, Appellant	)	No.92-35503
	)	Appellant,
	)	D.C. No.
	)	CV-91-391-FVS
	)	Eastern District of
v	)	Washington (Spokane)
	)	
UNITED STATES OF AMERICA, Appellee.	)	MEMORANDUM*

Appeal from the United States District Court for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted February 22, 1993 **

Before: GOODWIN, SCHROEDER, and CANBY, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Daniel T. Miller appeals pro se the district court's dismissal of his appeal as untimely from a bankruptcy court's order. The bankruptcy court denied Miller's motion to amend its order dismissing his petition for relief under Chapter 11 of the Bankruptcy Code. We have jurisdiction under 28 U.S.C. 158(d), and we affirm.

A "notice of appeal shall be filed with the clerk of the bankruptcy court within 10 days of the date of the entry of the judgment appealed from." Bankr. R. 8002(a); see Slimick v. Silva (In re Slimick), 928 F.2d 304, 306 (9th Cir. 1990). The timely filing of a notice of appeal to the district court is jurisdictional. Greene v. United States (In Re Souza), 795 F.2d 855, 857 (9th Cir. 1986). A timely motion to amend or make additional findings of fact under Rule 7052(b), or to alter or amend the judgment or for a new trial under Rule 9023, tolls the time for appeal until entry of the order denying such motion. Bankr. R. 8002(b).

On June 24, 1991, Miller filed an amended plan of reorganization. On July 24, 1991, the bankruptcy court denied Miller's motion for confirmation of the amended plan and

entered an order dismissing the case. On August 1, 1991, Miller filed a motion to amend the bankruptcy court's order of July 24, 1991 under Rules 7052(b), 9023 and 9024. On September 3, 1991, the bankruptcy court denied Miller's motion to amend. On September 13, 1991, Miller appealed the order denying his motion to amend to the district court.

On May 13, 1992, the district court affirmed the bankruptcy court's order denying Miller's motion to amend. On May 15, 1992, Miller filed a second notice of appeal to the district court challenging the bankruptcy court's July 24, 1991 order dismissing his bankruptcy case. On May 22, 1992, the district court dismissed Miller's notice of appeal as untimely.

Miller argues that his August 1, 1991 motion to amend the July 24, 1991 order tolled the time to file his notice of appeal until there was a final disposition by the district court on his motion to amend.

The time to appeal, however, was tolled only until September 3, 1991, when the bankruptcy court entered the order

denying Miller's motion to amend. See Bankr. R. 8002(b); see also In Re Souza, 795 F.2d at 857.

Accordingly, Miller's May 15, 1992 second notice of appeal challenging the bankruptcy court's July 24, 1991 order was untimely, and the district court did not err by dismissing the appeal. See In Re Souza, 795 F.2d at 857.

AFFIRMED.

APPENDIX B

Filed
May 22, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN re, DANIEL T. MILLER,	)	
	)	NO. CS-91-391-FVS
Appellant,	)	
vs.	)	
	)	ORDER
INTERNAL REVENUE SERVICE,	)	
	)	
Appellee.	)	

BEFORE THE COURT is Appellant's Notice of Appeal dated May 15, 1992. Mr. Daniel T. Miller is appearing Pro se as the Appellant. Assistant United States Attorney Robert Brouillard is appearing on behalf of the Appellees, the Internal Revenue Service.

The Notice of Appeal was presented to the United States Bankruptcy Court for the Eastern District of Washington by Mr. Miller. Mr. Miller also filed an objection to having his appeal heard by the Bankruptcy Appellate Panel. The Bankruptcy Court forwarded Mr. Miller's appeal to the United States District Court

for the Eastern District of Washington as being the Court of proper jurisdiction to hear appeals of orders from the Bankruptcy Court.

In the first paragraph of his Notice of Appeal, Mr. Miller states that he "appeals to the District Court from the final decree of the bankruptcy court this day ..." In the last sentence of his Notice of Appeal, Mr. Miller states "The Internal Revenue Service, through it's [sic] attorney, Mr. William H. Beatty, P.O. Box 1494, Spokane, Wa. 99210, **moved to dismiss Debtor's Chapter 11 Petition, which was granted and is the subject of this appeal."** (May 15, 1992 Notice of Appeal at (2) (emphasis added). Apparently, Mr. Miller's May 15, 1992 Notice of Appeal is directed at the Bankruptcy Court's Order Dismissing Chapter 11 and Adversary Proceedings entered on July 24, 1991 (Bk. Ct. Rec. 99).

A United States District Court has jurisdiction to hear appeals from final judgments or orders from bankruptcy courts in the same judicial district. 28 U.S.C. 158(a). The Bankruptcy Court's Order Dismissing Chapter 11 and Adversary Proceedings is a final order suitable for appeal. Rule 8002(a) of the Bankruptcy Rules requires that an appellant file a notice of appeal **within 10 days of the date**

of the entry of the judgment, order, or decree appealed from. Bankruptcy Rule 8002(a)

In order to file a timely Notice of Appeal of the Bankruptcy Court's Order Dismissing Chapter 11 Proceedings, Mr. Miller would have had to file his notice of appeal within 10 days of July 24, 1991. Instead, Mr. Miller filed the Notice of Appeal of the Bankruptcy Court's Order Dismissing his Chapter 11 proceedings on May 15, 1992. Mr. Miller did not appeal the Bankruptcy Court's Order Dismissing his Chapter 11 proceedings in a timely fashion. Therefore, the May 15, 1992 Notice of Appeal is dismissed.

The Order from this Court, entered on May 13, 1992, affirmed the Bankruptcy Court's Denial of Appellant's Motion for Reconsideration, which was entered on September 3, 1991. An appeal from a District Court final judgment is appealable to the Court of Appeals for that circuit. 28 U.S.C. 1293(b). If Mr. Miller intended his May 15, 1992 Notice of Appeal to be an appeal of this Court's Order Affirming the Bankruptcy Court's Denial of Motion for Reconsideration, his appeal should be directed to the

Ninth Circuit Court of Appeals, rather than to this Court, which does not have jurisdiction to hear his appeal.

Mr. Miller has also filed a Motion for Stay Pending Appeal of the Bankruptcy Court's July 24, 1991 Order Dismissing his Chapter 11 Proceedings. This Court has already denied Appellant's Motion for a Stay of the July 24, 1991 Order, Pending Appeal of the Motion for Reconsideration (Ct. Rec. 19). Since Mr. Miller's May 15, 1992 Notice of Appeal is not properly before the Court, Mr. Miller's accompanying Motion for Stay Pending Appeal is similarly not before this Court in a proper fashion. The Court denies the Motion for a Stay as **moot.**

Mr. Miller's further appeals should be directed to the Court of Appeals for the Ninth Circuit.

IT IS so ORDERED: Mr. Miller's Notice of Appeal is not properly before this Court. The Court **dismisses** Mr. Miller's Notice of Appeal **without prejudice and denies the Motion for Stay Pending Appeal as moot.**

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and furnish copies to counsel .DATED this 22 day of May 1992.

FRED VAN SICKLE United States District Judge

Filed
MAY 13 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN re, DANIEL T. MILLER, Appellant, vs. INTERNAL REVENUE SERVICE, Appellee.	NO. CS-91-391-FVS ORDER

BEFORE THE COURT is Appellant's Appeal of the Bankruptcy Court's Order Denying Motion for Reconsideration. Mr. Daniel Miller is appearing EEL se as the Appellant. Assistant United States Attorney Robert Brouillard is appearing on behalf of the Appellees, the Internal Revenue Service. Oral argument was heard on March 13, 1992. Having reviewed the record and being fully advised in this matter, the Court enters this order to memorialize the Court's ruling.

Jurisdiction

A United States District Court has jurisdiction to hear appeals from final judgments or orders from bankruptcy courts in the same judicial district. 28 U.S.C. 158(a). The Bankruptcy Court's Order Denying the Motion for Reconsideration is a final order suitable for appeal.

Discussion

Appellant, Daniel T. Miller, filed a Chapter 11 bankruptcy petition on December 2, 1987. On November 8, 1990, the United States of America filed a Motion to Dismiss/Convert Chapter 11. (Bk. Ct. Rec. 34.) Appellant filed a Plan for Reorganization on November 21, 1990. (Bk. Ct. Rec. 38.) On March 7, 1991, Appellant filed a Motion for Sanctions. (Bk. Ct. Rec. 56.) On June 24, 1991, the Appellant filed an Amended Plan. (Bk. Ct. Rec. 78.)

A confirmation hearing was scheduled for June 25, 1991, apparently to review the initial plan that was filed in November, 1990. A transcript of the June 25, 1991 confir-

mation hearing indicates that Judge Klobucher used the June 25, 1991 hearing as an opportunity to hear arguments regarding Appellant's Motion for Sanctions and Appellee's Motion to Dismiss/Convert Chapter 11. (Bk. Ct. Rec. 128.)

On July 24, 1991, the Bankruptcy Court entered an Order Denying Confirmation of the Debtor's Plan (Bk. Ct. Rec. 95), an Order Denying Debtor's Motion for Sanctions (Bk. Ct. Rec. 97), an Order Dismissing Chapter 11 and Adversary Proceedings (Bk. Ct. Rec. 99), and a letter to Mr. Miller and the Assistant United States Attorney representing the government explaining the orders (Bk Ct. Rec. 94).[1]

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[1] The Bankruptcy court's docket sheet contains an entry for Document 84 on June 26, 1991 with the following notation: "Hrg re: Confirmation/Motion to Dismiss/Sanctions - NOT HELD - Judge Klobucher was unavailable for the hearing therefore the case manager moved the hearing to 7/25/91 at 3:00 p.m. and notified-the parties. /jkb" Bankruptcy Court Docket Sheet, Case Number 87-03919-KII at 4.
This notation indicates that Judge Klobucher had intended to hold a confirmation hearing on the Appellant's Amended Plan. However, the second confirmation hearing apparently was never held because the Order to Dismiss was filed on July 24, 1991, the day before the second confirmation hearing was scheduled to occur.

In the July 23, 1991 letter to Mr. Miller and AUSA Beatty, the bankruptcy judge set forth his findings of fact and conclusions of law. On page 2, the letter states:

> - The Court finds that this case involves primarily a single, disputed debt to the Internal Revenue Service. The case has been pending for three and one-half years without any apparent resolution. The debtors have no employees and have no business operations to reorganize. The debtors have few bona-fide unsecured creditors and their financial problems involve essentially a dispute with the Internal Revenue Service which can be resolved outside the bankruptcy court's jurisdiction . . .
>
> Pursuant to 11 U.S.C. 1129(a)(3) and 11 U.S.C. 1112(b) of the Bankruptcy Code, the Court finds that the plan proposed by the debtors lacks good faith, and the debtors' actions constitute "cause" for dismissal. The Court further finds that this bankruptcy case and the adversary proceedings filed therein are an abuse of process under section 105(a) of the Code equally justifying dismissal. The Court further finds that the debtors failed to provide evidence at the hearing to justify an award of sanctions against the U.S. Attorney's office pursuant to 28 U.S.C. 1927.

Letter from Judge Klobucher to Miller and Beatty of 7/23/91, at 2, (Bk. Ct. Rec. 94).

Appellant appeals from the Bankruptcy Court's order for three main reasons: (1) the Bankruptcy Court did not con-

duct a confirmation hearing on Appellant's Amended Plan, Bk. Ct. Rec. 78; (2) the Bankruptcy Court failed to address whether the Internal Revenue Service was a suitable entity to make an appearance in this case; and (3) the Bankruptcy Court failed in its duty to rehabilitate the debtor. (Ct. Rec. 10.)

The threshold issue is whether lack of a confirmation hearing on Appellant's Amended Plan invalidates the Bankruptcy Court's dismissal of Appellant's bankruptcy proceedings. A district court reviews a bankruptcy court's conclusions of law de novo and its factual findings for clear error. In re Pacific Far East Lines, Inc., 889 F.2d 242, 244 (9th Cir. 1989); In re Pizza of Hawaii, 761 F.2d 1374, 1377 (9th Cir. 1988); In re Jules Mayor Pontiac, Inc., 779 F.2d 480, 482 (9th Cir. 1985).

Confirmation of a plan is governed by 11 U.S.C. 1129(a) which states: "The court shall confirm a plan **only if all** the following requirements are met: . . . (3) The plan has been 26 proposed in good faith and not by any means forbidden by law." 11 U.S . S 1129(a) (emphasis added). Case

law indicates that the bankruptcy court has power to dismiss cases that it deems are not in compliance with the good faith requirement of 11 U.S.C. 5 1129(a)(3). E.g., In re Van Owen Car Wash, Inc., 82 B.R. 671 (Bkrtcy. C.D. Cal. 1988); In re Panache Development Co. Inc., 123 B.R. 929 (Bkrtcy. S.D. Fla. 1991).

Lack of good faith can be evidenced by filing a petition for Chapter 11 bankruptcy without having any business operations to reorganize, without having any employees, and without having many unsecured creditors. In re Panache 11 Development Co. Inc., 123 B.R. 929 (Bkrtcy. S.D. Fla. 1991). The bankruptcy court is not the appropriate forum to decide tax liability alone. See In re Nancant Inc., 8 B.R. 1005 (Bankr. D. Mass. 1981).

The Bankruptcy Court's factual findings that the Appellant filed the petition in bad faith are supported by the few unsecured creditors involved, and the absence of employees or a business enterprise. Applying the correct standard of review, this Court concludes that such factual findings are not clearly erroneous. The Bankruptcy Court's legal conclu-

sions that the Appellant's bankruptcy petition could be dismissed because of the Appellant's bad faith in filing the petition are supported by both 11 U.S.C. 1129(a) and by case law. After reviewing the legal conclusions de novo, this Court finds the Bankruptcy Court's legal conclusions correct.

There was no necessity for the Bankruptcy Court to hold a confirmation hearing on either the initial plan filed by the Appellant or the Amended Plan, because the Appellant had not met the threshold requirement of filing the plans in good faith as required by 11 U.S.C. 1129(a). Having concluded that the petition was not filed in good faith, the Bankruptcy Court had no obligation to allow the case to proceed. The Bankruptcy Court was correct in denying Appellant's Motion for Reconsideration because dismissal of the case was correct. The Appellant notes that the Bankruptcy Court failed to serve him with a copy of the Order Denying the Motion for Reconsideration (Ct. Rec. 10 at 9). As Mr. Miller states in his brief, he received notice of the Order Denying the Motion for Reconsideration prior to the deadline for filing his appeal from the order (Ct. Rec. 10 at 10).

A "court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Fed. R. Civ. P. 61. The Court concludes that the failure to serve Mr. Miller with a copy of the order was at most harmless error.

The Court affirms the Bankruptcy Court's decision that the Appellant's petition was properly dismissed because it was not filed in good faith. Having concluded that the Appellant has not met the threshold requirement of filing in good faith, it is not necessary to address Appellant's other arguments.

IT IS ORDERED: The Bankruptcy Court ' s denial of Appellant's Motion for Reconsideration is affirmed. All pending motions are denied as moot.

IT IS ORDERED . The Clerk is hereby directed to enter this Order, furnish copies to counsel, and close the case.

DATED this 13 day of May 1992.

FRED VAN SICKLE
United States District Judge

Entered in Civil Docket on . 5/13/92

APPENDIX C

Filed
3 Sep 1991

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF WASHINGTON

In Re:	) CASE NO. 87-03919-K1
DANIEL T. AND MARSHA L.	)
MILLER,	) ORDER DENYING
	)
	) MOTION FOR
	) RECONSIDERATION
Debtors.	)
	)
----------)	

THIS MATTER having come before the Honorable John M. Klobucher on Debtor's Motion to Amend Findings by Court for Relief From Judgment or Order - Or - In the Alternative For New Trial And Or Amend Judgment filed August 1, 1991, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT: the Debtor's Motion is denied.

DATED this 3d day of September, 1991.

John M.Klobucher, BANKRUPTCY JUDGE

Filed
24 July 1991

July 23, 1991

Mr. Daniel T. Miller
Box 115
Edwall, WA 99008

Mr. William H. Beatty
Assistant United States Attorney
P.O. Box 1494
Spokane,WA 99210

In re: Miller, Daniel T. and Marsha L., No. 87-03919-K11

Gentlemen:

This matter came before the Court for hearing on June 25, 1991 on the motions for confirmation of debtors' plan, the Internal Revenue Service's motion to dismiss and the debtors' motion for sanctions. After proper notice and hearing, having examined the pleadings and heard the arguments of Dan Miller and counsel for the Internal Revenue Service, the Court makes the following Findings of Fact and Conclusions of Law.

The debtors filed this Chapter 11 on December 2, 1987. This Court has jurisdiction of this matter as a core proceeding. 28 U.S.C. 1334 and 157. To date no plan has been confirmed. Mr. Miller is employed by United Airlines and his wife is employed as a substitute teacher. The debtors are not operating a business and have no employees. The debtors' schedule A-3 lists the following unsecured creditors:

Class 1, Idaho Department of Labor & Industries
Class 2, U. S. Bankruptcy Court
Class 2, U. S. Trustee System
Class 3, Idaho Dept. of Rev. & Tax
Class 3, U. S. Internal Revenue

Three adversary proceedings have been filed by the debtors against the Internal Revenue Service. The debtors' file indicates the following activities: a motion for release of garnishment related to a tax issue, intermittent motions to dismiss or convert by the United States Trustee for unreasonable delay, objections to tax claims, and various other motions relating to the dispute between the debtor and the Internal Revenue Service. The debtors' plan proposes to

reorganize by litigating their claims against the Internal Revenue Service.

11 U.S.C. 1129 enumerates the requirements governing confirmation of a plan. The Court is required to confirm a plan only if all of the requirements of section 1129 are met. 11 U.S.C. 1129(a)(3) requires that the plan has been proposed in good faith. There is no test for determining whether or not a debtor has filed his petition in good faith, but the Court may consider any factors which evidence an intent to abuse the judicial process and the purposes of reorganization. In re Van Owen Car Wash, Inc., 82 B.R. 671 (Bkrtcy. C.D. Cal. 1988).

11 U.S.C. 1112 provides the rules for conversion and dismissal. 11 U.S.C. 1112(b) gives the Court wide discretion to make an appropriate disposition of a case and provides ten bases that constitute cause for dismissal. This List, however, is not exhaustive, and the Court may consider other facts and use its equitable powers under 11 U.S.C. 105(a) to reach an appropriate result in individual cases. In

re Panache Development Co., Inc., 123 B.R. 929 (Bkrtcy. S.D. Fla. 1991).

The Court finds that this case involves primarily a single, disputed debt to the Internal Revenue Service. The case has been pending for three and one-half years without any apparent resolution. The debtors have no employees and have no business operations to reorganize. The debtors have few bona fide unsecured creditors and their financial problems involve essentially a dispute with the Internal Revenue Service which can be resolved outside the bankruptcy court's jurisdiction. The debtors' only apparent need for equitable relief is the need for determination of their tax debt. These factors are many of the same factors outlined in Panache Development Co., Inc., supra evidencing a bad faith filing. Furthermore, the debtors are not an organization with a business purpose other than to use the remedies available in a Chapter 11. The bankruptcy court "is not a tool by which debtors can seek to have tax questions litigated outside the normal administrative

and legal means by which such relief is usually obtained." In re Nancant Inc., 8 B.R. 1005 (Bankr.D.Mass.1981).

Pursuant to 11 U.S.C. 1129(a)(3) and 11 U.S.C. 1112(b) of the Bankruptcy Code, the Court finds that the plan proposed by the debtors lacks good faith, and the debtors' actions constitute "cause" for dismissal. The Court further finds that this bankruptcy case and the adversary proceedings filed therein are an abuse of process under section 105(a) of the Code equally justifying dismissal. The Court further finds that the debtors failed to provide evidence at the hearing to justify an award of sanctions against the U. S. Attorney's office pursuant to 28 U.S.C. 1927.

Accordingly, confirmation is denied, and the Internal Revenue Service's motion to dismiss is granted. This bankruptcy case and all proceedings pending herein are dismissed.

Sincerely yours,

John M. Klobucher

pc U. S. Trustee

APPENDIX D

Filed
AUG 11 1993

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DANIEL T. MILLER, Husband, Appellant	No.92-35503
	Appellant,
	D.C. No.
	CV-91-391-FVS
	Eastern District of
v	Washington (Spokane)
UNITED STATES OF AMERICA, Appellee.	ORDER

Before: GOODWIN, SCHROEDER, and CANBY, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc. The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.